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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219888
Party	Defendant Senuvo LLC
Correspondence Address	STEPHEN H BEAN LEGENDS LAW GROUP PLLC 93 SOUTH MAIN SUITE 3 KAYSVILLE, UT 84037 UNITED STATES steve@legendslaw.com
Submission	Opposition/Response to Motion
Filer's Name	Steve Bean
Filer's e-mail	steve@legendslaw.com, andra@legendslaw.com, docket@legendslaw.com
Signature	/Steve Bean/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:
Application Serial No. 86127647
for the mark SENUVO

4Life Trademarks, LLC Opposer v. Senuvo, LLC Applicant	Opposition No. 91219888 APPLICANT’S OPPOSITION TO OPPOSER’S COMBINED MOTION TO COMPEL AND STRIKE
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Applicant, Senuvo, LLC (“Senuvo”), herein opposes the combined motion of Opposer, 4Life Trademarks, LLC (“4Life”) to (1) compel discovery and (2) strike Applicant’s expert disclosure.

1) Response to Opposer’s “Factual Background”

Rather than beleaguer the board with refutations of Opposer’s characterization of the facts, Applicant responds with two additional points of information that shed light on the present motion. First, Applicant has timely responded to Opposer’s discovery requests and produced the requested documents and discovery responses within the discovery period as set by the board. Second, the size difference between the parties is instructive. Opposer is a giant network marketing company that boasts of \$250 million in net sales in 2012. Applicant, on the other hand, is a tiny startup business with limited resources. It is clear from Opposer’s numerous pieces of correspondence to counsel and the present motion to compel that Opposer intends to make this a costly proceeding. Applicant is hopeful that the Board recognizes that Applicant’s intent-to-use application is not the gateway to disproportionate and burdensome discovery demands meant to crush resistance rather than resolve differences.

2) Applicant's Interrogatory Responses Are Sufficient

Opposer claims that Applicant failed to sufficiently answer Interrogatory Nos. 4, 9, 14, 15, 16 and 17. As shown below, however, Applicant's answers are complete and sufficient.

Applicant responds to each allegedly deficient interrogatory answer as follows:

Interrogatory No. 4.

Have any of Your Products ever been sold directly to one or more of Your Customers via a website owned, operated or controlled by you? If so, identify each website on which any of Your Products has been sold directly to Your Customers and state the dates during which Your Products have been made available for sale on that website.

Applicant's Answer:

Yes. www.senuvo.com - at least as early as 2014; www.mysenuvo.com - at least as early as 2015; www.joinseenuvo.com - at least as early as 2015; and www.buysenuvo.com - at least as early as 2015.

Applicant's answer to Interrogatory No. 4 is truthful and complete. Applicant identified all four websites where its product has been sold. It identified at least the earliest years that product was sold directly to customers via the websites. Applicant did not specify an ending date for these sales because there is no ending date as the sales are ongoing. Given the fluid nature of the startup operation, Applicant provided its most accurate response to this question and it gave its answers in a format commonly used when alleging dates of first use at the Trademark Office ("at least as early as"). There is no basis for compelling anything further.

Interrogatory No. 9.

Describe all of your plans to expand the use of the SENUVO Mark in commerce, whether such plans include product expansion, geographic expansion, distribution network expansion, or otherwise.

Applicant's Specific Objection:

Applicant objects to this Interrogatory as being vague and ambiguous, overbroad, irrelevant, and burdensome.

Applicant's Answer:

Subject to and without waiving its specific and general objections, Applicant answers that it intends to use the SENUVO mark for the goods and/or services described in the Application.

Opposer asked for all of Applicant's plans to expand its use of the SENUVO mark in commerce. Despite objecting to the over breadth and ambiguity of this request, Applicant attempted to provide a good-faith answer to this interrogatory, as it has an obligation to do. *See* Fed. R. Civ. P., Rule 33(b) ("Each interrogatory must, *to the extent it is not objected to*, be answered separately and fully in writing under oath." (*emphasis added*)). Applicant answered that it intends to use the mark on the goods listed in the intent-to-use application. This would be an expansion of Applicant's use of the mark. This is a simple but truthful and complete interrogatory answer. As a startup business, Applicant does not have detailed marketing or expansion plans. This is hardly unusual. Opposer assumes that there must be more to Applicant's plans but this assumption is based on guesswork without any evidentiary support. There is simply no basis for forcing Applicant to craft additional make-work answers when its plans are simply to use the mark on the goods described in its trademark application.

Interrogatory No. 14.

With respect to your Third Defense, explain the complete factual basis for your contention that Opposer cannot expand its use of the 4LIFE TRANSFER FACTOR RENUVO mark to include "the categories of goods, whether competitive or non-competitive, in Classes 3, 5, 30 and 32 that were claimed by Applicant in its November 23, 2013 trademark filing."

Applicant's Answer:

On May 1, 2013, Opposer filed a single trademark application for the mark 4LIFE TRANSFER FACTOR RENUVO in class 5 for "dietary and nutritional supplements; vitamin, mineral and herbal supplement." Six months later, on November 23, 2013, Applicant filed its trademark application for the mark RENUVO in classes 3, 5, 30, and 32 for beverage related goods, including essential oils for flavoring beverages, dietary beverage supplements in liquid and dry mix form, soy proteins for use in powdered beverages, tea bases, herbal flavorings for beverages, and fruit beverages. Opposer's mark is limited to all four words, 4Life Transfer Factor Renuvo, in class 5 for dietary, nutritional, vitamin, mineral and herbal supplements. Opposer is attempting to narrow its mark from four words to one and expand its classes of goods from one to four. Opposer's trademark opposition to Applicant's pending Application is unfounded.

Subject to its General Objections, which specifically addressed discovery requests that attempted to impose a burden greater than one allowed by the rules of discovery, Applicant provided a detailed, factual basis for this interrogatory request. However, rather than address the specificity of Applicant's response Opposer merely states that the answer failed to give the reason why. The board has stated that "[i]t is settled that a party in a Board proceeding generally

has no obligation to identify its fact witnesses or other trial evidence prior to trial” and that “interrogatory requests that opposer ‘identify each and every fact, document and witness in support of its pleaded allegations’ [are] equivalent to a request for identification of fact witnesses and trial evidence prior to trial, and therefore improper.” Time Warner Entertainment Company L.P. v. Jones, 65 USPQ2d 1650, 1655 (TTAB 2002). Furthermore, the board has also stated that a party need not specify the evidence it intends to present in support of its case. Polaroid Corporation v. Opto Specs, Ltd., 181 USPQ 542 (TTAB 1974). Applicant submits that it provided a good-faith answer to this interrogatory, to the extent it did not object under Rule 33(b), and that any further attempt to force additional disclosure by Opposer is improper.

Interrogatory No. 15.

With respect to your Sixth Defense, identify all facts upon which you base your contention that Opposer is barred from opposing Your Application based upon unclean hands.

Applicant’s Answer:

At this time, discovery is ongoing and Applicant is in the process of collecting information to support its contention in the Sixth Defense. Applicant may supplement its answer after further discovery has been taken.

In Applicant’s answer to this interrogatory, Applicant advised that it was collecting information through the discovery process to support its contention of unclean hands and that it would supplement its contention after further discovery had been taken. Opposer claims in its motion to compel that it is entitled to know the facts of the unclean hands defense and it requests the board to force Opposer to answer. In response, Applicant notes that Opposer has not produced a single document in response to Opposer’s two sets of document requests, including documents that would prove or disprove Opposer alleged dates of first use. Opposer cannot ignore Applicant’s outstanding discovery requests and simultaneously demand “all facts” supporting Applicant’s ongoing investigation of its unclean hands defense, especially when the relevant facts are being withheld by Opposer. While Opposer’s failure to respond to discovery continues, this request should be denied.

Interrogatory No. 16.

With respect to your Seventh Defense, set forth your proposed amended recitation of goods for Your Application, incorporating all of your proposed restrictions and

limitations, that you contend would eliminate any likelihood of confusion with Opposer's RENUVO Marks, if the amendment is implemented.

Applicant's Answer:

Applicant's proposal for a possible amendment to its description of goods and services is sufficiently set forth in Applicant's Seventh Defense.

Applicant's Seventh Defense clearly states that its recitation of goods could be amended to include the limiting descriptor "marketed via network marketing." See First Amended Answer and Counterclaim, p. 14. There is no basis to Opposer argument that Applicant has "not set forth any recitation of goods." Opposer's motion to compel answers already sufficiently provided should be denied.

Interrogatory No. 17.

With respect to your First Amended Counterclaim to restriction of Opposer's Registration No. 4489645 under Section 18 of the Lanham Act, set forth your proposed amended recitation of goods for Opposer's mark in Registration No. 4489645, incorporating all of your proposed restrictions and limitations.

Applicant's Answer:

Applicant's proposal for a possible amendment to Opposer's description of goods and services in its registration is sufficiently set forth in Applicant's First Amended Counterclaim.

Again, Opposer ignores the plain language in Applicant's First Amended Counterclaim, where Applicant specifically provides the proposed limiting descriptor "marketed via network marketing" to the partial cancellation request. There is no basis to Opposer argument that Applicant has not specifically set forth its proposed recitation of goods and Opposer's motion to compel should be denied.

3) Applicant's Document Production Was Proper and Complete

The Federal Rules state, "[a] party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." Fed. R. Civ. P. 34(b)(2)(E)(i) " (*emphasis added*). Applicant's document production precisely conformed with the rules. Applicant's first production of documents (Bates Nos. SV0001-0071) was made with the Initial Disclosures on November 5, 2015. The second

production of documents (Bates Nos. SV0072-0147) was made on April 21, 2016.¹ Importantly, the documents were produced as they were kept in the usual course of business.

Opposer demands that the board compel Applicant to categorize the documents and identify which document is responsive to which request. This demand ignores the plain language of Rule 34(b)(2)(E)(i), which specifically provides that documents may be produced as they are kept in the usual course of business and need not be categorized according to individual requests. Opposer's demand is a transparent attempt to force unnecessary discovery costs onto Applicant. Furthermore, Opposer incorrectly tells the board that Applicant has failed to provide the Senuvo Policies and Procedures manual, when that document was included in the first document production under Bates Nos. SV0043-0071. There is simply no basis for Opposer's demand to compel documents already produced. Moreover, Opposer alleges that Applicant's production is incomplete but it fails to identify any specific document request that forms the basis for this allegation. Opposer's motion to compel should be denied

4) Applicant's Expert Disclosure Need Not Be Stricken

Opposer has asked the board to strike Applicant's expert disclosure. However, Applicant's expert disclosure is not subject to striking because it was never filed with the board. Applicant does not intend to use the previously designated expert.

Conclusion

For all of the above reasons, Applicant requests that Opposer's motion be denied in all respects.

¹ It is ironic that Opposer filed this motion to compel production telling the board (incorrectly) that "Applicant produced only 76 pages of documents" when Opposer has produced *zero* pages of documents in response to Applicant's two sets of document requests.

Dated: June 1, 2016.

SENUVO, LLC

By:

By: 

Stephen H. Bean, Esq.,
Legends Law Group, PLLC
330Main
Kaysville, UT 84037
(801) 337-4500

Attorney for Applicant

Certificate of Service

I hereby certify that on Wednesday, June 1, 2016, I caused a true and correct copy of **APPLICANT'S OPPOSITION TO OPPOSER'S COMBINED MOTION TO COMPEL AND STRIKE** to be delivered by U.S. Mail, First Class Postage, with an electronic courtesy copy by email:

Glenn Spencer Bacal
Bacal Law Group, P.C. 6991 E. Camelback Rd., Ste D-
102 Scottsdale, AZ 85251
Glenn.Bacal@bacalgroup.com

with a copy to :
Jamie Tuccio
Jamie.Tuccio@bacalgroup.com

By: Steve Beam